

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WON JUNG CHOI,

Plaintiff :

Chapter 7

v.

Bankruptcy No. 15-11830ELF

:

UNITED STATES DEPARTMENT OF
EDUCATION, AND XEROX
EDUCATION SERVICES, LLC
DOING BUSINESS AS ACS EDUCATION
SERVICES, ("ACS")

Adversary No. 15-00222ELF

:

Defendants :

:

ORDER

AND NOW, this day of June, 2015, upon consideration of the Federal Defendant's Motion to Dismiss, and it appearing that the United States Department of Education neither holds nor owns the debtor's promissory notes, it is hereby ORDERED that the Complaint is dismissed as to the United States Department of Education.

BY THE COURT:

J.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WON JUNG CHOI, Chapter 7
Plaintiff :
v. : Bankruptcy No. 15-11830ELF
: Adversary No. 15-00222ELF
UNITED STATES DEPARTMENT OF :
EDUCATION, AND XEROX :
EDUCATION SERVICES, LLC :
DOING BUSINESS AS ACS EDUCATION :
SERVICES, ("ACS") :
Defendants :
:

MOTION OF FEDERAL DEFENDANT,
UNITED STATES DEPARTMENT OF EDUCATION TO DISMISS

Defendant, the United States Department of Education, by its undersigned counsel, moves this Court to dismiss the complaint pursuant to Rule 7012(b)(6), Fed.R.Bankr.Pro., for failure to state a claim against it upon which relief can be granted, and in support of this motion represents the following:

1. On June 12, 2015, plaintiff/debtor, Won Jung Choi, filed the above-captioned adversary complaint seeking to discharge her student loan pursuant to 11 U.S.C. § 523(a)(8) and naming the United States Department of Education, as the party defendant.
2. The United States Department of Education does not own or hold any student loan promissory notes of Won Jung Choi.
3. The United States Department of Education is not a proper or necessary party to this action. According to the National Student Loan Data System (NSLD), American Student Assistance is the holder of the student loan.
4. To the extent that the loan described in the complaint is guaranteed or insured by the Department of Education, the current holder of the loan is fully empowered to

represent the Department's interest in the loan. See 20 U.S.C. § 1078(c)(2), 34 C.F.R. 782.402(I). The Department of Education will be bound by any determination of the court in this matter in the event that the loan is later assigned to the Department of Education.

5. For these reasons, no relief need be sought or granted against the defendant, and the complaint against Department of Education should be dismissed pursuant to Rule 7012(b)(6) of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, the United States of America requests that this Court dismiss Won Jung Choi's adversary complaint against the United States Department of Education.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/ Virginia R. Powel
VIRGINIA R. POWEL
Assistant United States Attorney
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106-4476
Phone: (215) 861-8263
Fax: (215) 861-8618
Virginia.Powel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed and caused a true and correct copy of the foregoing notice and motion to dismiss to be served electronically via ECF upon the following counsel of record for Plaintiff:

Henry J. Sommer, Esquire
Siana C. Newman, Esquire
Consumer Bankruptcy Assistance Project
718 Arch Street, 2nd Floor North
Philadelphia, PA 19106

Dated: June 29, 2015

/s/ Virginia R. Powell
VIRGINIA R. POWEL
Assistant United States Attorney